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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/530,625	05/19/2005	Robert Smith	099505-053047	7005

50828 7590 01/31/2008  
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EXAMINER

SULLIVAN, DANIELLE D

ART UNIT	PAPER NUMBER
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1616

MAIL DATE	DELIVERY MODE
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01/31/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/530,625

Applicant(s)

SMITH ET AL.

Examiner

Danielle Sullivan

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-54 is/are pending in the application.
- 4a) Of the above claim(s) 1-17 and 30-54 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 04/07/2005.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

Claims 1-17 and 30-54 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Groups I and III, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 12/06/2007.

Claims 2, 3, 31 and 32 were cancelled in an amendment filed 04/07/2005. Claims 1, 4-30 and 33-54 are pending. Claims 1, 4-17, 30 and 33-54 are withdrawn as pertaining to nonelected Groups I and III. Claims 18-29 are under examination on the merits as the read on the elected invention.

### ***Specification***

The disclosure is objected to because of the following informalities: "surfactancts" [0016] should be spelled "surfactants".

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 18, 22, 24-26 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Ni et al. (WO 99/57959).

Ni et al. teach a film coated seed formed by film coating a seed with a starch-based polymer, eg. polysaccharide (abstract). Suitable polysaccharide polymers include water-soluble or water-dispersible polysaccharides such as starches and gums (page 7, lines 2-5). The film coated seed may further comprise additives such as drying agents (page 8, lines 20-31).

Claims 18, 20, 21 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Branco et al. (US 4,665,648) in view of Freeman (Guide to Grains, 1999).

Branco et al. teach film-forming compositions, comprising alpha cellulose, for enveloping grains and seeds (abstract). The fact that barley is not explicitly taught adds no patentable weight due to a finite number of twenty grains available the choice of barley would have been anticipated by one skilled in the art.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19, 27 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ni et al. in view of Johnson (Potato Facts, 2000) and Zick et al. (6,070,358).

### **Applicant's Invention**

Applicant claims the composition as addressed above wherein the seed is a potato piece or barley. The composition may further comprise limestone and/or fir bark as a drying agent.

### **Determination of the scope and the content of the prior art**

#### **(MPEP 2141.01)**

Ni et al. teach the composition as rejected above under 102(b).

### **Ascertainment of the difference between the prior art and the claims**

#### **(MPEP 2141.02)**

Ni et al. do not teach that the crop seed is a potato piece nor the specific drying agent is fir bark. It is for this reason that Johnson is added.

Johnson teaches that the size of a potato seed piece affects early plant vigor (page 3, paragraph 5). Also, seed-piece treatments with a ground tree-bark component appear to aid in wound healing and prevent cut pieces from sticking together (page 4, paragraph 8).

Ni et al. do not teach the addition of limestone. It is for this reason that Zick is added.

Zick teaches herbicidal compositions comprising the addition of inert powder such as silica, chalk talc limestone or clay. The composition may be applied pre-emergence where the seed and composition are applied by separate systems or mixed and applied by the same system (column 7, lines 43-54).

### **Finding of prima facie obviousness**

#### **Rationale and Motivation (MPEP 2142-2143)**

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Ni et al. and Johnson to further include treating a potatoe piece because it is common practice to treat pieces of tubers as seed treatments to prevent disease. One would have been motivated to include fir bark as a drying agent because it is a tree-bark component which would aid in flowability of the seeds since potato pieces tend to stick together once cut.

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Ni et al. and Zick to further include limestone. One would have been motivated to include limestone because it is useful in agriculture for providing calcium to the plant and adjusting the acidity of soils so crops can grow more effectively.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Porter et al. (US 3,936,976), Watts (US 3,947,996), Chollet et al. (US 5,007,953), Meikle et al. (US 6,070,358), Cunningham et al. (US 5,737,872) and Rayburn (The Value of Agricultural Limestone, 1997).

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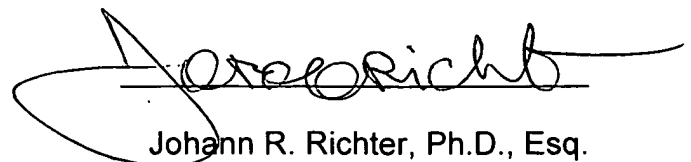
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danielle Sullivan whose telephone number is (571) 270-3285. The examiner can normally be reached on 7:30 AM - 5:00 PM Mon-Thur EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on (571) 272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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